

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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HARRY F. VELLAHN,

Plaintiff,

-against-

JOHN J. CALLAHAN, COMMISSIONER,
SOCIAL SECURITY ADMINISTRATION,

Defendant.

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HARRY F. VELLAHN
133 Beach 120 Street, # 2A
Far Rockaway, New York 11694
plaintiff pro se.

ZACHARY W. CARTER, United States Attorney
Eastern District of New York
(Michelle T. Weiner, of counsel)
One Pierrepont Plaza
Brooklyn, New York 11201
for defendant.

NICKERSON, District Judge:

Plaintiff Harry Vellahn brought this proceeding to review the final determination of the Commissioner of Social Security denying him disability insurance benefits for the period from February 9, 1975 through

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June 30, 1978. This Court has jurisdiction under 42 U.S.C. § 405(g). The Commissioner moves for judgment on the pleadings.

Plaintiff alleges that he has been disabled since December 31, 1975 due to a heart condition and hypertension. Plaintiff met the special insured status earnings requirements of the Social Security Act for purposes of establishing entitlement to disability benefits through June 30, 1978.

After plaintiff's application was denied at the administrative level an Administrative Law Judge held a hearing at which plaintiff appeared pro se after being advised of his right to counsel. The Administrative Law Judge found that plaintiff was not under a disability during the pertinent period. The Appeals Council denied a request for review, and this action followed.

The Administrative Law Judge made the following formal findings on November 4, 1996. Plaintiff, 62 years old, has a high school equivalency diploma and work experience as a mechanic. He has not worked since

June 30, 1978. Plaintiff has not established a severe cardiac condition or any other severe impairment on or before June 1978, his date last insured. Plaintiff has not been under a disability at any time within the meaning of Title II of the Social Security Act.

The Administrative Law Judge noted that plaintiff had testified that he was treated by a doctor in 1976, but was not treated by anyone else for the next 18 years. He found no evidence in the record that established that plaintiff was suffering from a cardiac condition prior to his date last insured.

Plaintiff last worked in 1975 repairing tugboats in a shipyard. He also worked on printing presses and other heavy machinery. He claimed that in 1975 he had myocarditis. He said that he had pain in his arms and legs beginning in 1972 or 1973, that it went away after a while, and came back a few years later.

Plaintiff saw Dr. Marvin Dizon intermittently from August 16, 1976 through June 19, 1994. His only visits to Dr. Dizon before June 1978 took place on August 16, 1976, and September 20, 1976. Dr. Dizon indicated that

plaintiff's blood pressure was 140/100 on the first visit and 120/84 on the second visit. He did not note any physical limitations at those times. Plaintiff did not see Dr. Dizon again until 1984 when his blood pressure was checked.

At the administrative hearing plaintiff testified that after seeing Dr. Dizon in 1976 he did not go for any medical treatment, or even a physical examination, until 1994. He testified that from 1976 to 1994 he ran the house, walked, and "tried to keep in shape." He also asserted that he had money and did not need to work.

The Social Security Act provides that the findings of the Commissioner as to any fact shall be conclusive if supported by substantial evidence. See 42 U.S.C. § 405(g); Diaz v. Shalala, 59 F.3d 307, 312 (2d Cir. 1995). If the court finds that there is substantial evidence to support the Commissioner's determination the decision must be upheld, even if there is substantial evidence supporting the plaintiff's

position. See Jones v. Sullivan, 949 F.2d 57, 59 (2d Cir. 1991).

At his hearing plaintiff presented no evidence to the Administrative Law Judge of any disability prior to 1978. In fact, he testified that he had not sought or received medical treatment for heart disease prior to 1994. The Administrative Law Judge found that there was no reasonable way to date plaintiff's current condition back to June 1978.

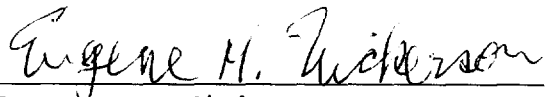
Plaintiff now says that because of a head injury he sustained as a child he was unable to admit he was ill at his administrative hearing. He says that he did not testify truthfully before the Administrative Law Judge and that he had in fact sought medical treatment prior to 1978. Plaintiff has not presented any additional medical records from that period.

This Court finds that the Administrative Law Judge reasonably concluded that plaintiff failed to meet his burden of showing that he suffered from a severe impairment during the relevant period. The decision of the Administrative Law Judge was supported by

substantial evidence. The Commissioner's motion is granted. The complaint is dismissed.

So ordered.

Dated: Brooklyn, New York
May 21, 1998


Eugene H. Nickerson, U.S.D.J.